IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 357 OF 1995

Milind Krishna Khandagale,
Age about 31 years,
Occupation Labourer,
R/o. Poyanje, Tq. Panvel,
District Raigad. ...Appellant.

Versus

The State of Maharashtra ...Respondent

.....

Shri. B.D. Joshi, Advocate for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

.....

CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 7TH DECEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. original accused has challenged the judgment and order dated 22.6.95 passed by the learned II Additional Sessions Judge, Raigad-Alibag in Sessions Case No. 142 of 1991. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 307 of I.P.C. and sentenced him to R.I. for three years and to pay fine of Rs.1,000/- i/d R.I. for six months.

2. The prosecution case briefly stated is as under:-

. The complainant and injured witness P.W.2 Vasant Dhole was the resident of village Nevli. On 4.5.91 a programme was arranged in the said village in respect of Ambedkar Jayanti. The programme was started at about 10.00 p.m. The appellant also attended the said programme. In the said programme ladies and gents were sitting separately. It is the prosecution case that the appellant started giving trouble to the ladies by going towards them. P.W.2 Vasant Dhole asked him not to disturb the ladies and he took the appellant to a nearby field in order to convince him. However, the appellant did not listen, hence, P.W.2 Vasant Dhole left the appellant and started going towards the place of programme. At that time, the appellant gave a blow of knife on the left side of his abdomen. P.W.2 Vasant Dhole shouted for help. On hearing his shouts, P.W.3 Anant Dhole, P.W.4 Kaluram Gadhe rushed to the spot and took him to the Government Hospital. The police came to hospital at Karjat and recorded his complaint (Exh.28). Thereafter, investigation commenced. During the investigation, a knife came to be recovered at the instance of the appellant. Statements of various witnesses came to be recorded. After completion of investigation,

charge-sheet came to be filed.

3. In due course, the case was committed to the Court of Sessions. Charge was framed against the appellant for the offence under Section 307 of I.P.C. The appellant pleaded not guilty to the said charge and claimed to be tried. It is the defence of the appellant that there was enmity between the maternal uncle of the appellant and father-in-law of P.W.3 Ananta Dhole and P.W.3 Ananta Dhole is related to P.W.2 Vasant Dhole. On 4.5.91 he went to village Nevli to attend the function of Ambedkar Jayanti, at that time, Ananta saw him and had talked with some other volunteers. Thereafter, P.W.2 Vasant Dhole, P.W.3 Ananta Dhole, P.W.4 Kaluram Gadhe and others took him behind the stage of the function and started beating him with sticks on his head and back. At that time Tukaram Dhole tried to assault him by knife, however, the appellant moved aside and the blow of knife landed on the stomach of P.W.2 Vasant Dhole. The appellant was sent for medical examination as he sustained injuries, however, Medical Officer refused to give him certificate regarding his examination. So also the police refused to take his complaint regarding him being beaten by Ananta Dhole and others and false case came to be made registered against him.

4. During the trial, the prosecution examined eight witnesses. P.W.2 Vasant Dhole is the injured witness. P.W.3 Ananta Dhole, P.W.4 Kaluram Gadhe are the witnesses who came to the spot on hearing the shouts of P.W.2 Vasant Dhole. P.W.5 Dr. Shivade and P.W.6 Dr. Nazirkar are the doctors who examined P.W.2 Vasant Dhole. P.W.7 Dattu Dhole is the panch witness relating to recovery of knife at the instance of the appellant and P.W.8 P.S.I. Kadam is the Investigating Officer. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant as stated in para-1 above. Hence, this appeal.

5. I have heard Shri. Joshi, the learned advocate for the appellant and Shri. Shitole, the learned A.P.P. for the respondent-State. I have perused the entire material on record.

6. The main witness in the present case is P.W.2 Vasant Dhole. As the prosecution story has been taken from the examination in chief of this witness hence, I do not intend to repeat the same here as it would only overburden this judgment. From the evidence of P.W.2 Vasant Dhole it has come on record that the appellant assaulted him on the

stomach with knife (Article 3). This witness has identified the knife as well as the appellant. The appellant was known to him since about four to five years prior to the incident, hence, there is no question of any case of mistaken identity. Besides P.W.2 Vasant Dhole, there is no other eye witness in the present case. Other two witnesses i.e. P.W.3 Ananta Dhole and P.W.4 Kaluram Gadhe came to the spot after Vasant shouted for help. Thus on the aspect of assault their evidence is of no use to the prosecution.

7. It is to be noted that it is specifically the case of the appellant that he was assaulted first and due to the assault by P.W.2 Vasant Dhole, P.W.3 Ananta Dhole, P.W.7 Dattu Dhole and others, he sustained injuries on his head and back. The panchnama (Exh.19) relating to the arrest of the appellant clearly shows that he received injuries on the back of his head and in the centre of his head. The said injuries were bleeding. In the panchnama it has also noted that on the back of the appellant there were injuries and weal marks. The fact that the appellant was injured is also corroborated by the Investigating Officer P.W.3 P.S.I. Kadam. P.W.8 P.S.I. Kadam has admitted that there were injuries on the person of the appellant. However, according to him all these

injuries were abrasions. P.S.I. Kadam has stated that there were no serious injuries on the person of the appellant, therefore, he has not filed the injury certificate of the appellant in the Court. Thus, it is admitted by him that the appellant was sent for medical examination as there were injuries on his person. It appears that the prosecution has deliberately not produced the medical certificate of the appellant. The stand taken by P.S.I. Kadam that the appellant only had abrasions cannot be believed because the panchanama (Exh.19) shows that the two injuries on the head of the appellant were bleeding injuries. Abrasions would not cause active bleeding about 4 hours after the incident. In the present case the incident had occurred at about 2.30 a.m. and the panchnama in which injuries of the appellant are reflected was drawn between 6.15 to 6.30 a.m. Thus, the evidence on record clearly shows that the appellant did receive injuries in the incident and the injuries were not just abrasions but they were of a much more serious nature.

. It is surprising to note that the main witness i.e. P.W.2 Vasant Dhole has pleaded ignorance about the injuries on the body of the appellant. So also P.W.3 Ananta Dhole has denied seeing any injuries on the person of the appellant. However,

P.W.4 A.S.I. Kaluram Gadhe has admitted that there were injuries on the person of the appellant. Looking to the evidence on record it is clear that the appellant had received a number of injuries in the incident. Some of these injuries were on vital part of the body like head. There were two injuries on the head and the said injuries were bleeding even four hours after the incident. From the fact that the injured witness as well as P.W.3 Ananta Dhole have denied or pleaded ignorance about the injuries, it is clear that these prosecution witnesses are suppressing the genesis of the crime. The fact that the injured witness and his relations have denied the injuries on the person of the appellant shows that there is more to the incident than meets the eye. The evidence on record bears out the defence of the appellant that when he attended the programme he was first assaulted by P.W.2 Vasant Dhole and P.W.3 Ananta Dhole and his relations. However, I am not inclined to believe the defence taken by the appellant that he did not assault P.W.2 Vasanta Dhole but one Tukaram was about to assault the appellant but as the appellant moved aside the blow landed on Vasant. There is no material on record to support this defence taken by the appellant. However, from the material on record it appears that the appellant was assaulted first and thereafter, in retaliation or in order to

save himself, he has assaulted P.W.2 Vasant Dhole. The learned counsel for the appellant has submitted that the evidence on record shows that the appellant was first assaulted. He has also placed reliance on the evidence of P.W.2 Vasant Dhole wherein he has stated that he took the appellant to a nearby field to convince him. Mr. Joshi has submitted that it is admitted that Vasant Dhole took the accused away to convince him, however,the method used for convincing the appellant was to beat him with sticks on the head and back. Thus Mr. Joshi has submitted that when the appellant was being beaten by sticks on the head he is bound to develop an apprehension that serious injury or grievous hurt would be caused to him, therefore, the appellant has attacked Vasant in order to save himself. He has submitted that there is only one injury on the body of Vasant i.e. on abdomen, in such case it cannot be said that the appellant exceeded the right of private defence.

8. Thus, Shri. Joshi, the learned advocate for the appellant has submitted that whatever was done by the appellant was done by him in the exercise of his right of private defence. He has submitted that the appellant was assaulted first on the vital part of the body i.e. head resulting in bleeding injuries and on account of this attack, in order to

save himself, the appellant has attacked P.W.2 Vasant Dhole. Hence, Mr. Joshi, has submitted that his case would be covered by Section 101 of I.P.C. and the appellant is entitled to acquittal on that ground. The evidence on record clearly shows that the appellant had suffered two bleeding injuries on the head and other injuries on his body. The prosecution has not offered any plausible explanation for the injuries on the person of the appellant. Those injuries were fresh injuries and they were found on the body of the appellant immediately after the incident. The injuries specially on the back of the appellant are not such that they can be self inflicted. Obviously when a person is beaten on the head with sticks in such a manner as to cause bleeding injuries there would be a reasonable apprehension in his mind that such assault would at least cause serious injury if not grievous hurt to him. In such case in order to save himself if the appellant commits an act as done in the present case, it would be covered by section 101 of I.P.C. In such case in my opinion, the appellant deserves to be acquitted, as in my opinion, the act done by the appellant was in the exercise of private defence.

9. It is the prosecution case that the knife (article 3) was recovered at the instance of the

appellant. In this connection it is pertinent to note that the pancha witness P.W.7 Dattu Dhole has admitted that the knife was not wrapped or sealed. In such case finding of blood stains on the knife by the Chemical Analyser is not of much significance. It is also pertinent to note that the blood of the injured person was not sent to C.A. in order to tally the blood on the knife and that of the injured. Moreover, in the present case, I do not find it safe to rely on the testimony of panch witness P.W.7 Dattu Dhole as he is the cousin of the complainant. P.W.7 Dattu Dhole has admitted that he is the cousin of the complainant Vasant Dhole. In view of this statement it is clear that the panch witness is not an independent witness and he is a highly interested witness. In such case no reliance can be placed on the circumstance of recovery of knife at the instance of the appellant.

10. In this view of the matter, the conviction of the appellant under Section 307 of I.P.C. is set aside and the appellant is acquitted thereunder. The fine amount, if any, paid by the appellant be refunded to him. The appellant is on bail, his bail bond shall stand cancelled. Criminal appeal is allowed.